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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

DENNIS MONTGOMERY,

Plaintiff,

v.

JAMES RISEN, ET. AL.

Defendant.

Case No. : 3:15-cv-02035-AJB-JLB

[Pending in the Southern District of
Florida, Case 15-20782-CIV]

**MOTION FOR RECONSIDERATION
OF MOTION TO COMPEL
COMPLIANCE WITH SUBPOENA TO
MICHAEL FLYNN, OR IN THE
ALTERNATIVE, EXPEDITED
OBJECTION TO MAGISTRATE
JUDGE'S ORDER OF OCTOBER 30,
2015**

Hearing Date: TBD
Time: TBD
Judge: TBD
Courtroom: TBD

**MOTION FOR RECONSIDERATION OF MOTION
TO COMPEL COMPLIANCE WITH SUBPOENA TO MICHAEL FLYNN, OR IN THE
ALTERNATIVE, EXPEDITED OBJECTION TO MAGISTRATE JUDGE'S ORDER
OF OCTOBER 30, 2015**

Plaintiff Dennis Montgomery hereby moves for reconsideration of the Order Denying

1 Plaintiff's Motion to Compel Compliance with Subpoena to Michael Flynn (Docket No. 9), or in
2 the alternative, respectfully objects to Magistrate's Order of October 30, 2015, pursuant to
3 Federal Rules of Civil Procedure ("FRCP") 59 and 72.

4
5 It appears as though the affidavit of the process server may have been overlooked due to
6 the circumstances surrounding the personal service of Mr. Flynn. Plaintiff had hired a Mr.
7 Brandon Berg of Signature Legal Services to personally serve Mr. Michael Flynn with the
8 Subpoena to Testify at a Deposition In a Civil Action issued on August 26, 2015. When Mr.
9 Berg could not be reached, undersigned counsel submitted an affidavit due to the urgency of the
10 matter. Mr. Berg was involved in an auto accident, that had prevented him from returning to
11 work and sending another copy of the affidavit of service. Now that the affidavit of the process
12 server was obtained once Mr. Berg returned to work after his car accident, it must respectfully be
13 substituted for the affidavit of undersigned counsel.

14
15 Plaintiff stated in his original Motion to Compel that he would be supplementing the
16 Motion to Compel when he received a copy of the affidavit of service from the process server
17 (Docket No. 1). In the re-filed Motion to Compel (Docket No. 6) the affidavit of service had
18 been received and attached at the end of Exhibit 3. Further, any and all witness fees were sent by
19 U.S. Mail to Mr. Flynn along with a copy of the subpoena immediately after Mr. Flynn was
20 personally served on August 27, 2015.

21
22 Finally, this Motion to Compel was filed within the Southern District of California given
23 Mr. Flynn's location in Rancho Santa Fe. Mr. Flynn is located outside of 100 miles of Los
24 Angeles, which is where the Central District of California is based. For this reason, the Southern
25 District of California would be the Court which would have jurisdiction over Mr. Flynn
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1 WHEREFORE, Plaintiff respectfully requests an order compelling Mr. Flynn's
2 compliance with the deposition, as discovery in this case is set to close on November 19, 2015.
3 In the alternative, Plaintiff respectfully objects to the Magistrate's Order of October 30, 2015,
4 and requests that the issue be taken to the presiding District Court judge of this Court, on an
5 expedited basis.
6

7
8 Dated: November 4, 2015
9

10
11 Respectfully Submitted,

12 /s/ Naveed Mahboobian

13 Naveed Mahboobian

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of November, 2015, a true and correct copy of the foregoing was served via U.S. Mail upon the following:

Michael Flynn
6125 El Tordo
Rancho Sante Fe, CA 92067

/s/ Naveed Mahboobian
Naveed Mahboobian